

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

Theodore Davis,

Plaintiff

v.

Armstrong Relocation, Lln,

Edna Dumas, City of Montgomery,

et. Al.

Defendants.

Case No.

2:05-cv-632-T

MOTION TO DISMISS CERTAIN CLAIMS

From the Amended Complaint

Comes Now the Plaintiff, Theodore Davis, via Counsel and files this his Motion to Dismiss certain Claims filed in his Amended Complaint pursuant to Fed.R.Civ.P.41 as per the provisions of Rule 23(e), of Rule 66, and the Court's Order of October 17, 2005. The Plaintiff states as follows in support of the Motion for Dismissal of the following claims or portion of claims made in this matter:

1. The "Third Count, Breach of Contract" of the amended complaint, paragraphs 61 through 67 are due to be dismissed as the State Court has already ruled on this matter regarding the home and as such there is no further action available to the Plaintiff regarding the "Breach of Contract Claim" due to the sale of the Home.
2. The "Eight Count, Civil Rights Violation" of the amended complaint, paragraphs 92 through 97 are due to be dismissed as to the City of Montgomery only for violation of 42 U.S.C Section 1983, & 1985 and Section 1986 which was not specially stated in paragraph 94 but was implied in paragraph 93.

3. The "Ninth Count, TRO/Injunction" paragraphs 98 through 105 are due to be dismissed as the relief sought in this claim is now moot as to this matter, in that the property has been taken, sold and the personal property in said home as been removed and/or disposed of by the Defendant, Dumas and/or the other Defendants.
4. The "Eleventh Count" contains several different claims for relief based on state law. However, the claim against the City of Montgomery for Respondent Superior is due to be dismissed. However, the remaining claims are still alleged.

Therefore based on the above statements the Plaintiff is asking the Court to grant is motion for voluntary dismissal of the following:

1. The claims for Breach of Contract, Count Three, as to the sale of the home.
2. The claims for Civil Rights violations against the City of Montgomery in the Eighth Count, specifically the claims made under 42 U.S.C. Section 1983, 1985, and 1986.
3. The claims stated in the "Ninth Count, TRO/Injunction" as they are now moot.
4. The claim for damages due to the theory of Respondent Superior in the eleventh claim as to the City of Montgomery only.

Done this the 28th day of October, 2005.



Michael Rountree (ROU009)

Counsel for the Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of October, 2005, served a copy of the foregoing amended complaint to all known parties to this proceeding by placing the same in the United States mail, properly addressed and first-class postage prepaid to the following counsel of record.

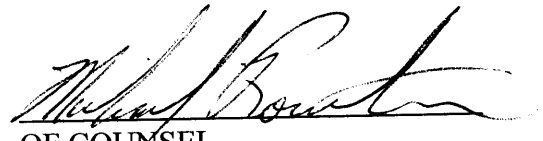
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